



HENRY McMASTER  
ATTORNEY GENERAL

May 6, 2010

Tandy P. Carter, Chief of Police  
Columbia Police Department  
P. O. Box 1059  
Columbia, South Carolina 29201

Dear Chief Carter:

In a letter to this office you indicated that the Columbia City Council has requested that the accident investigation involving Mayor-elect Stephen Benjamin and Ms. Deborah Rubens be turned over to the State Highway Patrol. You also stated that the Council is attempting to pass an ordinance which would allow future accident investigations to be turned over to the Highway Patrol when involving an elected official. You further stated that the Council is requesting that you provide a "brief" on the referenced investigation by Friday, May 7, 2010. You noted that this is an active investigation that is not as yet completed. You have requested an opinion from this office as to the legality of the aforementioned requests from the City Council.

S.C. Code Ann. § 5-7-110 states that "[a]ny municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties." (emphasis added). In the opinion of this office, such provision would be applicable to the appointment of a chief of police for a municipality.

We are informed that the City of Columbia has a council-manager form of government. See: S.C. Code Ann. §§ 5-13-10 et seq. Among the powers and duties of a municipal council under such form of government is the authority set forth in Section 5-13-30 to

[e]stablish other administrative departments and assign and distribute the work thereof upon recommendation of and with the approval of the manager...(and)

- ..to inquire into the conduct of any office, department or agency of the municipality, make investigations as to municipal affairs and give the public information concerning them....

Pursuant to Section 5-13-90, among the duties of the manager are to

...(1) [a]ppoint and, when necessary for the good of the municipality, remove any appointive officer or employee of the municipality and fix the salaries of such officers and employees, except as otherwise provided in this chapter or prohibited by law and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office;....

Furthermore, Section 5-13-100 states that

[m]unicipal council may, by ordinance, create, change and abolish offices, departments or agencies of municipal government upon the recommendation of the manager or may, in accordance with such recommendations, assign additional functions and duties to such offices. The head of each department shall be designated director thereof and shall have supervision and control over his department subject, however, to the direction of the manager.

We are also informed that pursuant to Columbia municipal ordinance, Section 10-31, “[t]he chief of police, subject to the city manager, shall have administrative supervision over the police department....” (emphasis added).

In its decision in Bunting v. City of Columbia, 639 F.2d 1090 (4<sup>th</sup> Cir. 1981), the Fourth Circuit Court of Appeals recognized that

Columbia has a council-manager form of government, and the city manager in a council-managed city is empowered under state law to dismiss any city employee “for the good of the municipality.” S.C. Code § 5-13-90 (1976). Similarly, Columbia has adopted an ordinance permitting the city manager to dismiss employees when necessary for the good of the city. Code of Ordinances for the City of Columbia, South Carolina, § 3-3. Such provisions indicate that city employees do not have a property interest in their employment but rather that they hold their positions at the will and pleasure of the city. Accord, Bane v. City of Columbia, 480 F.Supp. 34 (D.S.C.1979); Gambrell v. City of Columbia, No. 77-CP-40-1312 (Court of Common Pleas of Richland County, South Carolina, December 19, 1979).

639 F.2d at 1093-1094. It was further noted that at that time, "...nothing in the city's personnel policy manual can be read as granting a city employee a property interest in his job." 639 F.2d at 1094. The Court in Bane, supra, determined that Section 5-13-90 "...authorize(s) the City Manager to delegate the power to hire and fire, a necessary delegation in a city the size of Columbia." 480 F. Supp. at 38.

A prior opinion of this office dated January 3, 1997 stated that pursuant to the language in Section 5-13-90, cited above, the court in Bunting determined that such language "...created no expectancy of continuation in employment." See also: Op. Atty. Gen. dated August 13, 1996 ("[u]nquestionably, pursuant to Section 5-13-90, the city manager in the council-manager form of government possesses broad authority over city employees and personnel." An opinion of this office dated July 3, 1986 citing Bunting stated that the Court had held that "...municipal police officers served at the pleasure of the city, and thus possessed no federally protected property interest...."

As noted above, Section 5-7-110 authorizes a municipality to appoint police officers and "...prescribe their duties." The cardinal rule of statutory interpretation is to ascertain the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Full effect must be given to each section of a statute, words therein must be given their plain meaning, and phrases must not be added or taken away in the absence of ambiguity. Hartford Acc. & Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). An opinion of this office dated April 2, 1996 stated that

...we have...noted that Section 5-7-110 gives municipalities broad authority with respect to a municipal police department. A municipality is not required by the statute to establish a police force if it does not choose to do so. Op. Atty. Gen., No. 92-67 (November 6, 1992). In that light, it has been stated that

[t]he authority to establish a police force would be futile if it did not carry with it, at least by implication, the authority to enact reasonable rules for the effective administration of the force and to compel obedience to them by reasonable means. Consequently, subject to the rule that, in jurisdictions in which matters pertaining to the police department are considered to be of state-wide concern, or the rule that local regulations may not conflict with state law, it is within the power of the board or body in control or the municipal authorities to prescribe rules and regulations for the government and to enforce them.

**Conclusion**

As we stated in Op. No. 92-67, it is fully within the authority of a municipal council to enact reasonable rules and regulations regarding governance of its police force. Such would include the authority to direct the chief to turn over an investigation to another police agency when council concludes there is the appearance of a conflict of interest. The chief, in such circumstances, has no discretion regarding council's directive. Such is consistent with Section 5-7-110 which authorizes the municipality to prescribe the duties of the police.

The Chief of Police serves at the pleasure of the city which can prescribe his duties. In the opinion of this office, the City of Columbia would be well within its authority to instruct the chief that the referenced accident investigation be turned over to the Highway Patrol and to enact an ordinance that would allow future accident investigations to be turned over to the Highway Patrol when involving an elected official.

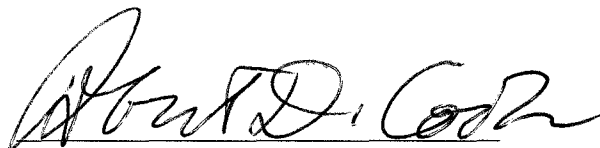
Sincerely,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General